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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,574	06/25/2003	Armin Ruck	964-030780	3328
28289	7590	04/26/2006	EXAMINER	
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			CULBRETH, ERIC D	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/603,574	Applicant(s) RUCK, ARMIN	
	Examiner Eric Culbreth	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/5/04&6/23/05</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the roller(s) (claims 6-7) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

This refers to paragraph [0014].

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 2 and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 2 recites that the driver's seat is suspendedly mounted on the intermediate frame. However, there is no disclosure of a suspension (i.e., spring or damper) between the driver's seat and intermediate frame. Hence, it is not clear how this claim limitation is accomplished.

Claim 10 recites a guide oriented from a front-top to a rear-bottom for the adjustment of the driver's seat. It is unclear what part of the invention this is. If it is the toggle 16, the recitation is unclear because this is not an "adjustment" mechanism as disclosed.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In claim 1, line 7 "and/or" is indefinite, failing to positively define structure.
- b. In claims 6 and 7 the recitation of a profile or profile is indefinite because a "profile" is not structure.
- c. In claim 8, line 2 "and/or" is indefinite because it fails to positively define structure.
- d. Claim 8-9 would appear to be inaccurate in reciting the driver's seat and/or floor plate as adjustable relative to the intermediate frame (the floor plate is suspended but not "adjustable" as disclosed).

e. In claim 10, line 2 there is no antecedent basis in the claims for “the adjustment” of the driver’s seat.

f. In claim 11, there is no clear antecedent basis for “the suspension element” (claim 1 only recited the suspension element in the alternative only (i.e., “one suspension element...or...”)).

g. Similarly, in claim 12, there is no clear antecedent basis for “the damping element”.

h. In claim 13, line 2 “and/or” is indefinite, failing to positively recite structure.

i. In claim 14, line 2 “and/or” is indefinite, failing to positively recite structure.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3-5, 11-12, 16 and 18 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by WO 91/04221 (cited by applicant).

WO ‘221 discloses an industrial “reach” truck as broadly recited in claim 18 (i.e., a forklift truck that reaches for boxes such as box 5) comprising vehicle frame 2 and a driver’s station or cabin 4 comprising a floor plate (not illustrated, but as member 4 is a cabin designed with noise insulation at page 6, lines 20-21, it would have at least one

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floor plate enclosing the bottom), and at least one driver's seat (page 4, line 5 from the end of the page). The driver's seat and floor plate are suspended by spring 16 relative to the vehicle frame, and cabin 4 is an intermediate frame to which the seat and floor plate are fastened movably mounted by vertical guide rods 6 relative to the vehicle frame 2. Hydraulic spring 15 is at least one damping element connecting the intermediate frame 4 to the vehicle frame, and metal coil spring 13 is at least one suspension element connecting the intermediate frame and vehicle frame (claims 1, 3-5, and 11-12). Regarding claim 16, WO '221 discloses the industrial truck is on an unsuspended chassis (page 4, lines 6-9).

9. Claims 1-2, 8 and 17 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by English Patent 1,440,686 (cited by applicant).

English '686 discloses an industrial truck as functionally recited (i.e., English '686 is an industrial truck inasmuch as the features recited in the body of the claim form an industrial truck) a vehicle frame 22, a driver's station comprising floor plate 13 and driver's seat 11, 12 suspended relative to the vehicle frame, and the floor plate and driver's seat fastened to an intermediate frame 18, 23, 24, with at least one suspension and/or damping element 30 connecting the intermediate frame with the vehicle frame. (claim 1). Regarding claim 2, seat 11, 12 is mounted suspendedly on the intermediate frame 18 (page 1, lines 69-90). Regarding claim 8, at least the floor plate 13 is adjustable relative to the intermediate frame inasmuch as applicant's invention. In

regard to claim 17, cylinder 31 is translational guide element connecting the intermediate frame and the vehicle frame.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6-7 and 9-10 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '221 in view of UK Patent 2,288,770 (cited by applicant).

UK '770 discloses guiding a roller in a slot at page 7, lines 1-4. it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify WO '221 to include a roller in a profile or slot as taught by UK '770 in order to positively guide or drive members in raising and lowering direction (UK '770, page 7, lines 1-4)(claim 6). Regarding claim 7, providing three rollers in parallel profiles or slots is an obvious matter design choice, as case law holds that it is obvious to duplicate structure for multiplied effect, in this case being to better guide the intermediate frame (see St. Regis Paper Co. v. Bemis Co., Inc., 193 USPQ 8, 11 (7th Cir., 1977)). As functionally and indefinitely recited in claim 9, in the combination UK '770's driver's seat S and floor plate B relative to the intermediate frame in the combination are adjustable such that an adjustment of the height of the floor plate is coupled to a displacement of

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the driver's seat (i.e., when floor plate B is raised, the seat is raised). Regarding claim 10, in the combination UK '770's guide at FS is oriented for a front-top to a rear-bottom adjustment of the driver's seat.

12. Claims 13-15 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '221.

The natural frequency of vibration range claimed, as well as the decay of oscillation and the maximum amplitude are an obvious matter of design choice, as the specification gives no stated reason or particular purpose for the ranges or decay claimed, and the invention would appear to work just as well with similar ranges and amount to those already known in the art (i.e., oscillation in a vehicle suspension is usually designed to decay within two or three oscillations).

Conclusion


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Japanese Patent 2-24277 discloses a suspended floor plate and driver's seat in Figures 1 and 2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is 571/272-6668. The examiner can normally be reached on Monday-Thursday, 9:00-6:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571/272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Eric Culbreth
Primary Examiner
Art Unit 3616

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